

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

IBRAHIM A. SWEDAN,

Petitioner, 3:14-cv-01824-SU

v.

FINDINGS AND
RECOMMENDATION

MARION FEATHER,

Respondent.

SULLIVAN, Magistrate Judge.

Petitioner, a federal inmate in the custody of the Federal Bureau of Prisons, filed a petition under 28 U.S.C. § 2241 challenging disciplinary sanctions that were imposed when petitioner was housed by the BOP at a private contract facility, Cibola County Correctional Center, in Milan, New Mexico. Specifically, petitioner alleges that the sanctions are invalid because they were issued by a Disciplinary Hearings Officer that "was not an employee of the Federal Bureau of Prisons or Federal Prison Industries, as required by

the applicable regulations in place at the time." Petition (#1) p 7. Petitioner does not challenge the substantive validity of the disciplinary findings. Id.¹

Respondent contends that petitioner's petition should be dismissed as moot because a disciplinary hearings officer at FCI Sheridan, employed by the BOP, conducted a re-hearing of petitioner's incident report on January 8, 2015. Cortez Declaration (#12) p. 2-3, attachment 3.

I agree. The findings and sanctions from the contract DHO at the Cibola County Correctional Center have been superseded by the BOP DHO findings and sanctions on January 8, 2015. Petitioner has not established that he was prejudiced by the delay in the re-hearing. See, Bostic v. Carlson, 884 F.2d 1267, 1270 (9th Cir. 1989).

Petitioner's Petition (#1) should be denied as moot. The clerk of the court should be directed to enter a judgment dismissing this proceeding. The dismissal of petitioner's claim in this proceeding is without prejudice to his right to challenge the unspecified "procedural and substantive due process" irregularities in the January 8, 2015, re-hearing.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice

¹In Petitioner's Reply (#14) he alleges that he did not receive did not receive all procedural and substantive due process protections in his re-hearing.

of appeal pursuant to Rule 4(a) (1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have fourteen (14) days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties have fourteen (14) days within which to file a response to the objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

Certificate of Appealability

Should petitioner appeal, a certificate of appealability should be denied as petitioner has not made a substantial showing of the denial of a constitutional right. See, 28 U.S.C. § 2253(c) (2).

DATED this 9th day of February, 2015.

/s/ Patricia Sullivan
Patricia Sullivan
United States Magistrate Judge